

Judge	4819
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KENNETH J. HENRY  
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U.S. DISTRICT COURT  
WESTERN DIVISION  
CINCINNATI

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IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

CARL OEDER & SONS SAND & GRAVEL : CASE NO. C-1-01-826  
CO., A DIVISION OF OEDER & SONS :  
GARAGE INC., : (Judge Susan J. Dlott)

Plaintiff, : ANSWER OF DEFENDANT UNION  
 : TOWNSHIP (JURY DEMAND  
vs. : ENDORSED HEREON).  
 :  
UNION TOWNSHIP, et al., :  
 :  
Defendants. :

Now comes Union Township, Defendant herein ("Answering Defendant"), by and through counsel, and for its answer to Plaintiffs' *Verified Complaint*, states as follows:

**FIRST DEFENSE**

1. Answering Defendant admits that a copy of Resolution 112000-01 is attached as Exhibit "1" to Plaintiff's *Verified Complaint*. Answering Defendant denies the remaining averments contained within paragraph 1 of Plaintiff's *Verified Complaint*.

2. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained within paragraphs 2, 5, 6, 7, 8 and 10 of Plaintiffs' *Verified Complaint* and therefore denies those averments.

3. Answering Defendant admits that it is a political subdivision of the State of Ohio and is located in Warren County, Ohio. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining averments contained within paragraphs 3 of Plaintiffs' *Verified Complaint* and therefore denies those averments.

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4. Answering Defendant admits the averments contained within paragraph 4 of Plaintiff's *Verified Complaint*.

5. Answering Defendant admits or denies the averments incorporated by reference in paragraphs 11, 15, 17 and 19 of Plaintiffs' *Verified Complaint* to the same extent that said averments are otherwise admitted or denied herein.

6. Answering Defendant denies the averments contained within paragraphs 9, 12, 13, 14, 16, 18, 20, 21 and 22 of Plaintiffs' *Verified Complaint*

7. Answering Defendant denies each and every averment of Plaintiffs' *Verified Complaint* not specifically admitted as true herein.

#### **SECOND DEFENSE**

8. Plaintiff's *Verified Complaint* fails to state a claim upon which relief may be granted against Answering Defendant.

#### **THIRD DEFENSE**

9. Plaintiff has failed to join the necessary parties to this action pursuant to FRCP 19.

#### **FOURTH DEFENSE**

10. Answering Defendant is immune from liability for Plaintiff's claims.

#### **FIFTH DEFENSE**

11. The provisions of Ohio Revised Code §2744.01 *et seq.* bar Plaintiff's claims.

#### **SIXTH DEFENSE**

12. The act or omission of a third party and/or third parties for which Answering Defendant is not legally responsible proximately caused Plaintiff's injury and damage.

#### **SEVENTH DEFENSE**

13. Applicable statutes of limitation bar Plaintiff's claims.

#### **EIGHTH DEFENSE**

14. Plaintiff has failed to mitigate its damage.

**NINTH DEFENSE**

15. Plaintiff has failed to exhaust administrative remedies.

**NINTH DEFENSE**

16. Waiver and estoppel bar Plaintiff's claims.

**TENTH DEFENSE**

17. Plaintiff lacks standing and capacity to assert its claims.

**WHEREFORE**, having fully answered the *Verified Complaint*, Answering Defendant respectfully requests that Plaintiffs' *Verified Complaint* be dismissed with prejudice at Plaintiff's costs; and requests an award of reasonable attorney fees in its favor.

Respectfully submitted,



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Patrick K. Dunphy (0017827)  
FALKE & DUNPHY, LLC  
30 Wyoming Street  
Dayton, Ohio 45409  
(937) 222-3000  
Trial Attorney for Defendant  
Union Township

**JURY DEMAND**

Answering Defendant demands a trial by jury on all issues so triable.



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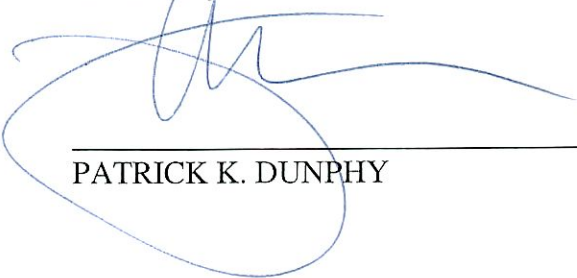
PATRICK K. DUNPHY

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing was served upon the parties by placing a copy in the ordinary U.S. Mail, this 17<sup>th</sup> day of DECEMBER, 2001, addressed as follows:

Brian P. Barger, Esq.  
Jack J. Brady, Esq.  
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Trial Attorney for Defendant,  
Thomas Arris, Warren County Sheriff



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PATRICK K. DUNPHY